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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/409,330	09/30/1999	JASON T. CASSEZZA	INTL-0268-US	5219
21906	7590	11/06/2006	EXAMINER	
TROP PRUNER & HU, PC 1616 S. VOSS ROAD, SUITE 750 HOUSTON, TX 77057-2631			LUU, SY D	
			ART UNIT	PAPER NUMBER
			2174	

DATE MAILED: 11/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/409,330

Applicant(s)

CASSEZZA, JASON T.

Examiner

Sy D. Luu

Art Unit

2174

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to the communication filed July 13, 2006. Permission of the technology center director to reopen prosecution is proceeded in accordance to M.P.E.P. § 1214.04 with this office action.

In view of the Decision On Appeal sent May 30, 2006, PROSECUTION IS HEREBY REOPENED. Claims 27-34 are cancelled in accordance to the affirmation by the Decision On Appeal. As per claims 35-38, which were reversed by the Decision On Appeal, the finality of that action is withdrawn accordingly. New grounds of rejection are made in view of Konstantinou under 35 U.S.C. 102(e) as set forth below.

In the event that the Examiner's interpretation of the limitation of "coupled to," as in the case with "a storage coupled to said processor" as recited in claim 35, is deemed to be too broad in light of the disclosure of the specification, a rejection under 35 U.S.C. 103(a) over Lee in view of Konstantinou et al. is also provided.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

2. Claims 35-38 are pending in this application. Claim 35 is the sole independent claim. This action is made Non-Final.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 35-38 are rejected under 35 U.S.C. 102(e) as being anticipated by Konstantinou et al. (“Konstantinou”, US 6,584,201 B1).

As per claims 35 and 38, Konstantinou teaches a system comprising:

a processor (fig. 1; col. 3, lines 59-60; processor 12); an inherent storage coupled to said processor (col.4, lines 5-17 and lines 44-48; *storage of user's preference is inherent so that calculations of sound-to-noise ratio based on previously saved/stored user's sound level preference could be made*); a sound generating circuit coupled to said processor (fig. 1; col. 3, lines 10-12; *sound-emitting device 36 being coupled to processor 12 via signal communication line 32*), and software stored on said storage to control the sound generated by said circuit to produce a plurality of sounds of progressively changing/increasing audio level (*inherent to the system so that sound based on achieving a constant or adjusted sound-to-noise ratio based on user input could be measured, compared and adjusted*); and

a remote control unit to receive user inputs and receive sound generated by said sound generating circuit, and to provide information about a user selected sound to said processor (fig. 1; col. 3, lines 24-35; col. 4, lines 18 et seq.; *remote control device 10 comprising microphones and circuitry associated with the volume control apparatus being located therein for monitoring and adjusting user's sound volume control preference*).

As per claim 36, Konstantinou teaches said software to correlate the time period when a user selection is received to a volume of the sound being generated at the time the user selection was received, and recording that volume level as a preset sound level (col. 4, lines 5-56; *monitoring and adjusting user's sound volume control preference*).

As per claim 37, Konstantinou further teaches the step of comparing an audio volume level produced by said system to the preset sound level (col. 4, lines 30-48; *calculations for adjusting sound volume according to user's preference for a new emitted sound level*).

Claim Rejections - 35 USC § 103

6. Claims 35-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (US 5,191,620) in view of Konstantinou et al. ("Konstantinou", US 6,584,201 B1).

As per claims 35 and 38, Lee teaches a system comprising: a processor (fig. 1; col. 2, lines 16-19; MICOM 3); a storage coupled to said processor (col. 2, lines 57-59); a sound generating circuit coupled to said processor, and software stored on said storage to control the sound generated by said circuit to produce a plurality of sounds of progressively changing/increasing audio level (figs 3A-3A'; col. 2, lines 15 et seq.); and a remote control unit to receive user inputs to provide information about a user selected sound to said processor (fig. 1, *transmitter 1*). Lee does not teach the remote control unit to receive sound generated by said sound generating circuit. Konstantinou teaches an automatic remote control device, in which microphones and circuitry associated with the volume control apparatus are located therein (abstract; col. 3, lines 24-35; *remote control device 10*). It would have been obvious to an artisan at the time of the invention to combine Konstantinou's teaching with Lee's remote control unit in order to provide a convenient and accurate measurement means for automatically adjusting sound volume according to user's preference given that the remote control unit being usually located next to the user.

As per claim 36, Lee teaches said software to correlate the time period when a user selection is received to a volume of the sound being generated at the time the user selection was received (fig. 2; *step 19*) and recording that volume level as a preset sound level (fig. 2; *steps 14 and 17*; col. 2, lines 30 et seq.).

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As per claim 37, Konstantinou further teaches the step of comparing an audio volume level produced by said system to the preset sound level (col. 4, lines 30-48; *calculations for adjusting sound volume according to user's preference for a new emitted sound level*).

Inquires

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sy Luu whose telephone number is (571) 272-4064. The examiner can normally be reached on Monday - Friday from 7:300 am to 4:00 pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid, can be reached on (571) 272-4063.

The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SY D. LUU
PRIMARY EXAMINER
ART UNIT 2174



PAUL SEWELL
ACTING DIRECTOR